IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Writ Petition No.10916 of 1997
DATED 1-2-2007

BETWEEN
Deputy Executive Engineer,
Gotta Barrage Sub Division,
Vamsadhara Project, Hiramandalam.

..
Petitioner

And

D.Satyanarayana and another.

.. Respondents

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.10916 of 1997

ORDER:

The Deputy Executive Engineer, Gotta Barrage Sub Division, Vamsadhara Project, Hiramandalam, Srikakulam District has approached this Court seeking to have the award of the Industrial Tribunal-cum-Labour Court, Hyderabad in I.D.No.55 of 1991 dated 30.9.1996, quashed.

The Government referred the following dispute

for adjudication of the Tribunal.

> "Whether the Deputy Executive Engineer, Gotta Barrage, Sub-Division, Vamsadhara Project, Hiramandalam is justified in terminating the services of Sri D.Satyanarayana? If so, to what relief the said workman is entitled?"

In his claim statement, the 1st respondent herein contended that he worked with the petitioner during the period 1972 to October, 1976 continuously, that he was retrenched in October, 1976 without notice, without compensation though he was paid wages of Rs.240/- at the time of retrenchment and that he was retrenched while his juniors were retained and fresh workers were appointed after his removal and that he was not employed elsewhere despite his best efforts.

In the counter filed before the Tribunal, the petitioner herein stated that the 1st respondent never worked under the management at any time; that there was no privity of contract between the parties and therefore the question of removing him from service did not arise.

The workman examined himself as W.W.1 and marked the conciliation failure report as Ex.W.1. On behalf of the petitioner herein, the Office Superintendent of Executive Engineer, Vamsadhara Project was examined as M.W.1.

The Tribunal took note of the deposition of M.W.1

that the 1st respondent had never worked in the division as per the records maintained in the office of the Pay and Accounts Office, Vamsadhara Project, Srikakulam and that M.W.1, in his cross examination, had admitted that he did not know details of the workmen and their work and that he had not attended the case before the Assistant Commissioner of Labour.

The Tribunal also noted that despite the 1st respondent having given notice to the petitioner to produce the service registers and payment vouchers from 1972 to October, 1976, he had not produce the said records nor filed any reply to the said notice. The Tribunal also took note of the admission of M.W.1 that for NMRs no appointment order or termination order would be given. The Tribunal drew an adverse inference against the petitioner since the records were not produced and held that if the records had been produced, they would show that the 1st respondent had worked continuously with the petitioner from 1972 to 1976. The Tribunal believed the evidence of W.W.1 and held that the 1st respondent had worked continuously with the respondent from 1972 to 1976. Accordingly, the Tribunal held that since the 1st respondent was retrenched without notice and without payment of compensation, while retaining his juniors, the provisions of Section 25-F and G of the Industrial Disputes Act, 1947 (for short 'the Act') had been violated and the 1st respondent was illegally

retrenched. The Tribunal held that the 1st respondent is entitled for reinstatement.

With regard to backwages the Tribunal, while noting the contention of the 1st respondent that he could not obtain alternative employment despite his best efforts, held that since he was retrenched as long back as in 1976 and had not pursued his legal remedies within a reasonable time and even the conciliation proceedings were initiated only in 1990, after a lapse of 14 years, there were latches on the part of the 1st respondent in pursuing his remedies and that the petitioner could not be burdened with backwages and continuity of service for this length of time. Accordingly, while holding that the 1st respondent was entitled for reinstatement, the Tribunal denied him backwages and continuity of service.

The learned Government Pleader for Irrigation would submit before this Court that except for the self serving oral evidence of the 1st respondent as W.W.1, there was no evidence on record to show that he had ever worked with the petitioner herein. The learned Government Pleader would contend that the burden is on the 1st respondent-workman to establish that he had worked continuously for a period of not less than 240 days during the 12 months period, prior to his termination. She would submit that since this burden

was not discharged by the workman, the Tribunal had erred in shifting the burden on the petitioner herein and in drawing an adverse inference against him merely for the reason that no records were produced, despite a notice being served on the petitioner by the 1st respondent. The learned Government Pleader would contend that since it has been the case of the petitioner herein even before the conciliation officer and in the counter filed before the Tribunal that the 1st respondent had never worked with them, the question of producing records to show that the 1st respondent did not work with them, did not arise.

It is well settled by a catena of judgments in **Manager, Reserve Bank of India, Bangalore v S. Mani**[1]; **Batala Coop. Sugar Mills Ltd v. Sowaran Singh**[2] *:;* **Surendranagar District Panchayat v. Dahyabhai Amarsinh**[3]; **Chief Engineer (construction) v. Keshava Rao (dead) by Lrs**[4] **; Range Forest Officer v. S.T.Hadimini** [5] that the burden, to prove that he had put in a minimum of 240 days service during the period of 12 months prior to the date of his termination, is on the workman and in the absence of the workman having discharged this burden, it cannot be said that the mandatory requirement under Section 25-F is violated. It is only

when this initial burden is discharged by the workman, would the burden shift on the employer to adduce evidence to the contrary. Since it has been the consistent case of the petitioner herein in his counter filed before the Tribunal and in his deposition, that the 1st respondent had never worked with them, the question of the petitioner producing records to show that the 1st respondent did not work with them, would not arise. Further, the 1st respondent having raised a dispute 14 years after his alleged termination cannot seek production of records after such long lapse of time nor was the Tribunal justified in drawing an adverse inference solely on the ground that the records were not produced.

While, this Court, in Certiorari proceedings, exercises supervisory jurisdiction over Labour Courts/Industrial Tribunals and does not sit in appeal over the findings recorded by them where the conclusions drawn by the Tribunal and the findings recorded by it are based on no evidence or are perverse or where there is an error apparent on the face of the award, this court would be justified in interfering in the matter. The Tribunal has acted contrary to law in placing the burden on the petitioner-employee to show that the respondent-workman had not worked with them for a period of more than 240 days in the twelve month period preceding his termination.

For the foregoing reasons, the award of the Tribunal to the extent it held that the 1st respondent is entitled to be reinstated is illegal and is required to be quashed. Accordingly, the writ petition is allowed. The impugned award in I.D.55 of 1991 dated 30.9.1996 is quashed. However, in the circumstances, there shall be no order as to costs.

RAMESH RANGANATHAN,J

Dt:1.2.2007
msv.

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[1] (2005) 5 SCC 100
[2] (2005) 8 SCC 481
[3] (2005) 8 SCC 750
[4] (2005) 11 SCC 229
[5] (2002) 3 SCC 25